IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23042 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JYOTI VIDYAMANDIR - Petitioner(s)

Versus

GUJARAT SECONDARY EDUCATION BOARD - Respondent(s)

Appearance :

MR MUKUND M DESAI for Petitioner(s) : 1,
MR DIPAK DAVE for Respondent(s) : 1,

MR. PRACHCHHAK, AGP for newly added D.E.O.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/11/2005

ORAL JUDGMENT

1. Leave to join District Education Officer, Ahmedabad city.

2. Heard Shri Mukund Desai, learned advocate appearing on behalf of the petitioner, Shri Dipak Dave learned advocate appearing on behalf of the respondent No.1 and Shri Prachchhak, learned AGP appearing on behalf of the

newly added party – District Education Officer, Ahmedabad city. The representative from the office of the District Education Officer is present in the Court. This Court has also called for the papers of Special Civil Application No.14913/2005 and in fact, Shri Chauhan, learned advocate has supplied the entire compilation of Special Civil Application No.14913/2005. This Court has gone through the entire record of Special Civil Application No.14913/2005 so as to know the allegations and the charges levelled against the petitioner trust while cancelling the recognition of the school run by the petitioner. This Court after going through the same, is prima facie of the opinion that very serious allegations are made against the petitioner trust and considering the same the order has been passed by the Gujarat Secondary Education Board on the basis of the recommendations from the District Education Officer, Ahmedabad city. This Court is aware of the fact that at present appeal against the order passed by the Gujarat Secondary Education Board cancelling the recognition is pending before the Education Department, State Government.

3. In this petition under Article 226 of the Constitution of India, the petitioner Jyoti Vidyamandir

through its Principal Shri Chandrakant V. Shah has prayed for an appropriate writ, direction or order declaring the action of the respondent in not accepting the forms of 55 students of standard 10th of the petitioner school as illegal and ultra virus. No other prayer is made in this present Special Civil Application. It is an admitted position that the recognition which was there in favour of the petitioner to run secondary school has been cancelled by the respondent No.1 as far back as on 7.5.2005 against which, the petitioner has filed appeal before the State Government which is pending. However, the fact remains that there is no stay order suspending and/or staying the order passed by the Gujarat Secondary Education Board dated 7.5.2005 cancelling the recognition of the secondary and higher secondary school run by the petitioner trust and the order passed by the Board cancelling the recognition is in existence meaning thereby, there is no recognition at present in favour of the petitioner. Inspite of the aforesaid facts, the petitioner is running the unrecognized institution and the petitioner Principal and the trustees are playing with the future of the students. Under the guise of the students the present Special Civil Application has been filed and it is prayed to direct the respondent Board to

accept the forms of the students, who have studied in the petitioner school, for appearing in standard 10th examination. It is also required to be noted that to run unrecognized institution is an offence and for which the prosecution is required to be lodged by the Competent Authority. The identical question came to be considered by the Division Bench of this Court (*Coram: Hon'ble Mr. Justice M.S.Shah & D.H.Waghela, JJ.*) in the case of *Shishu Jyot Kalyan And Kelavani Trust v. Gujarat Secondary Education Board* being referred in *Special Civil Application No.18141 of 2003* and after considering the law laid down by the Hon'ble Supreme Court in catena of judgments, the Division Bench has rejected the request of the school management to direct the Board for permitting the students to appear in the SSC Examination who were studying in Standard 10th but who did not obtain any prior permission. It is also observed by the Division Bench of this Court that any direction to the respondent Board to accept the examination forms of the students who have received instruction in standard 10th run by the petitioner will amount to directing the respondent Board to commit breach of the statutory provisions and also of the well settled principles laid down in a catena of decisions of the Hon'ble Supreme Court.

4. It is also submitted on behalf of the petitioner that initially against the order passed by the Gujarat Secondary Education Board dated 7.5.2005 cancelling the recognition, the petitioner preferred Special Civil Application No.14913/2005 and as the petitioner had an alternative remedy available by way of appeal before the State Government under Section 31(10) of the Gujarat Secondary Education Act; 1972, the learned Single Judge of this Court disposed of the aforesaid Special Civil Application directing the State Government to decide and dispose of the appeal preferred by the petitioner as early as possible in accordance with law. It is submitted that inspite of that direction the State Government has not decided the appeal and therefore, it is requested to grant the relief as prayed for. Merely because, the State Government has not decided the appeal is no ground by the petitioner to run unrecognized institution. There is no stay order granted by any of the authorities and the order passed by the Gujarat Secondary Education Board cancelling the recognition is in existence and thus, the petitioner is running the unrecognized institution. Under the circumstances, the relief which is prayed in the present Special Civil Application cannot be granted. However, the District Education Officer, Ahmedabad city,

may consider the fuuture of the students and may try to accommodate them in other schools and the District Education Officer, Ahmedabad city may consider the same sympathetically and after verifying the records of the students i.e. whether they are genuine students or not. However, so far as the present Special Civil Application at the instance of the petitioner, who has in fact committed an offence of running unrecognized institution, is required to be dismissed. The District Education Officer, Ahmedabad city is also directed to lodge prosecution against the petitioner-trustees of the trust and all other responsible persons who are running unrecognized institution and who are playing with the future of the students.

5. For the reasons stated above, the present Special Civil Application is dismissed. Petitioner is directed to pay the costs of Rs.5,000/- of this Special Civil Application and to deposit the same within a period of 4 weeks from today and produce the receipt with the Registry of this Court. The Registry is directed to place this matter for orders if such a receipt is not produced within a period of 4 weeks.

(M.R.SHAH, J.)

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